IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 677 of 2004
in
Suit No. 2839 of l990

Shaw Wallace & Co Limitd.. appellnat
vs
The Board of Trustees of the
Port of Bombay and anr. ...respondents
Mr.Shyam Diwan i/b D S K Legal for appellant
Mr.U.J.Makhija i/b Motiwala and co for respondents

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 1.3.2005

P.C:

. The appellant company has challenged the dismissal of a notice of motion taken out for setting aside an exparte decree. The exparte decree has been passed in a suit filed by the trustees of the Bombay Port Trust for recovery of port charges amounting to Rs.3,9l,723.54. The suit was filed on 7.9.l990 and the writ of summons was duly served on the appellants on 9.ll.l990. The appellants filed their appearance through M/s Bookwala and Co .However,no written statement was filed by the appellants .On 27.7.l995 the appellants were directed to file their written statement within three weeks failing which it was directed that the suit would be kept on board for exparte decree. Inspite of specific direction no

written statement was filed and consequently exparte decree came to be passed on l4.6.l996. Nearly 6 years thereafter the present notice of motion was filed for setting aside the exparte decree. In the notice of motion it was claimed that the appellants came to know about the exparte decree only on 8.l0.2002. Even this notice of motion was taken out after a period of 6 months of the knowledge of the exparte decree. The appellants have not made out any cause let alone sufficient cause to entitle them for setting aside the exparte decree passed on l4.6.l996. The appellants are grossly negligent and, therefore, to set aside the exparte decree would be putting a premium on the negligence. Appeal is, therefore dismissed.